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SENATE BILL 252

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Dede Feldman

FOR THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

AN ACT

RELATING TO MOTOR VEHICLES; INCREASING OFF-HIGHWAY MOTOR  
VEHICLE REGISTRATION FEES; REQUIRING NONRESIDENT OFF-HIGHWAY  
MOTOR VEHICLE PERMITS; IMPOSING SAFETY REQUIREMENTS; CREATING  
THE OFF-HIGHWAY MOTOR VEHICLE SAFETY BOARD; CREATING THE TRAIL  
SAFETY FUND; PROVIDING PENALTIES; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Off-Highway Motor Vehicle  
Act is enacted to read:

"NEW MATERIAL DEFINITIONS. -- As used in the Off-Highway  
Motor Vehicle Act:

- A. "board" means the off-highway motor vehicle  
safety board;
- B. "division" means the motor vehicle division;
- C. "fund" means the trail safety fund;

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1           D. "off-highway motor vehicle" means a motor  
2 vehicle designed by the manufacturer for operation exclusively  
3 off the highway or road and includes:

4           (1) "all-terrain vehicle", which means a motor  
5 vehicle fifty inches or less in width, having an unladen dry  
6 weight of one thousand pounds or less, traveling on three or  
7 more low-pressure tires and having a seat designed to be  
8 straddled by the operator and handlebar-type steering control;

9           (2) "off-highway motorcycle", which means a  
10 motor vehicle traveling on not more than two tires and having a  
11 seat designed to be straddled by the operator and that has  
12 handlebar-type steering control; or

13           (3) "snowmobile", which means a motor vehicle  
14 designed for travel on snow or ice and steered and supported in  
15 whole or in part by skis, belts, cleats, runners or low-  
16 pressure tires;

17           E. "staging area" means a parking lot, trailhead or  
18 other location to or from which an off-highway motor vehicle is  
19 transported so that it may be placed into operation or removed  
20 from operation; and

21           F. "unpaved public roadway" means a dirt graveled  
22 street or road that is constructed, signed and maintained for  
23 regular passenger-car use by the general public. "

24           Section 2. Section 66-3-1003 NMSA 1978 (being Laws 1978,  
25 Chapter 35, Section 199, as amended) is amended to read:

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1 "66-3-1003. OFF-HIGHWAY MOTOR VEHICLES--REGISTRATION.--

2 [~~A-~~] Unless exempted from the provisions of the Off-Highway  
3 Motor Vehicle Act, [~~no~~] a person shall not operate [~~a~~] an off-  
4 highway motor vehicle [~~which is to be operated or used~~  
5 ~~exclusively off the highways of this state~~] unless the off-  
6 highway motor vehicle has been registered in accordance with  
7 [~~the Off-Highway Motor Vehicle Act and the regulations of the~~  
8 ~~division adopted pursuant to that act.~~

9 B. ~~Application for registration and certificate of~~  
10 ~~title shall be made as provided in Subsections A through C of~~  
11 ~~Section 66-3-4 NMSA 1978. Upon receipt of an application for~~  
12 ~~an original registration of the motor vehicle or for any~~  
13 ~~certificate of title, the division shall make such examination~~  
14 ~~of records and indexes as provided in Section 66-3-8 NMSA 1978,~~  
15 ~~and registration indexes shall be kept and maintained for the~~  
16 ~~motor vehicles in the manner provided in Section 66-3-9 NMSA~~  
17 ~~1978. The division shall issue evidence of registration and a~~  
18 ~~certificate of title for the motor vehicles as provided in~~  
19 ~~Section 66-3-10 NMSA 1978.~~

20 C. ~~Upon receipt of the registration certificate,~~  
21 ~~the owner of an off-highway motor vehicle shall affix the~~  
22 ~~registration plate on the motor vehicle as prescribed by the~~  
23 ~~regulations adopted by the division] Chapter 66, Article 3 NMSA  
24 1978. The owner shall affix the validating sticker as provided  
25 in Chapter 66, Article 3 NMSA 1978."~~

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1 Section 3. Section 66-3-1004 NMSA 1978 (being Laws 1978,  
2 Chapter 35, Section 200, as amended) is amended to read:

3 "66-3-1004. REGISTRATION CERTIFICATE AND NONRESIDENT  
4 PERMIT FEES--RENEWAL. --

5 A. The ~~[fee]~~ fees for ~~[registration of]~~ registering  
6 an off-highway motor vehicle ~~[is fifteen dollars (\$15.00)]~~ are:

7 (1) seventeen dollars (\$17.00) for each off-  
8 highway motor vehicle; and ~~[the registration shall be good for~~  
9 ~~two years after the year in which the motor vehicle is~~  
10 ~~registered. Each registration must be renewed every three~~  
11 ~~years to be valid.]~~

12 (2) an amount determined by rule of the  
13 tourism department not to exceed thirty dollars (\$30.00) for an  
14 off-highway user fee for each off-highway motor vehicle.

15 B. Upon a change of ownership, the new owner ~~[must]~~  
16 shall make application and pay ~~[a]~~ registration ~~[fee]~~ fees of  
17 ~~[fifteen dollars (\$15.00)]~~:

18 (1) seventeen dollars (\$17.00) in the same  
19 manner as provided by ~~[regulations]~~ rules of the division for  
20 original registration; and

21 (2) an amount determined by rule of the  
22 tourism department not to exceed thirty dollars (\$30.00) for an  
23 off-highway user fee for each off-highway motor vehicle.

24 C. The fees for a nonresident permit of an off-  
25 highway motor vehicle are either:

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1                   (1) seventeen dollars (\$17.00) for each off-  
2 highway motor vehicle that is not registered in another state;  
3 and

4                   (2) an amount determined by rule of the  
5 tourism department not to exceed thirty dollars (\$30.00) for an  
6 off-highway user fee for each off-highway motor vehicle that is  
7 not currently in compliance with a similar off-highway user fee  
8 law or rule in another state; or

9                   (3) seventeen dollars (\$17.00) for a ninety-  
10 day permit to include both the off-highway motor vehicle not  
11 otherwise registered and the off-highway user fee.

12                   D. Except as provided in Paragraph (3) of  
13 Subsection C of this section, each registration certificate and  
14 nonresident permit shall be:

15                   (1) good for two years after the month in  
16 which the off-highway motor vehicle is registered or the permit  
17 is issued; and

18                   (2) renewed every two years.

19                   E. The off-highway user fee for each off-highway  
20 motor vehicle shall be paid upon obtaining and renewing each  
21 registration certificate or nonresident permit.

22                   ~~[C.]~~ F. Duplicate [certificates of] registration  
23 certificates and nonresident permits shall be issued upon  
24 payment of a [one dollar (\$1.00)] ~~seven-dollar-fifty-cent~~  
25 (\$7.50) fee.

1                   G. A fee of one dollar (\$1.00) on registration  
2                   certificates and nonresident permits shall be collected for the  
3                   New Mexico clean and beautiful program.

4                   H. The tourism department, in conjunction with the  
5                   division and the department of game and fish, may establish and  
6                   maintain sites to collect fees and issue permits for residents  
7                   and nonresidents. "

8                   Section 4. A new section of the Off-Highway Motor Vehicle  
9                   Act is enacted to read:

10                   "[NEW MATERIAL] FEES--DISPOSITION.--Fees collected  
11                   pursuant to Section 66-3-1004 NMSA 1978 shall be distributed as  
12                   follows:

13                   A. of each seventeen dollars (\$17.00) collected  
14                   pursuant to Paragraph (1) of Subsection A, Paragraph (1) of  
15                   Subsection B or Paragraph (1) of Subsection C of Section  
16                   66-3-1004 NMSA 1978, five dollars (\$5.00) to the division, and  
17                   the money is appropriated to the division to defray the cost of  
18                   making and issuing registration certificates, validating  
19                   stickers and nonresident permits for off-highway motor  
20                   vehicles. The remaining twelve dollars (\$12.00) shall be  
21                   deposited in the motor vehicle suspense fund for distribution  
22                   pursuant to Section 66-6-23 NMSA 1978;

23                   B. fees collected pursuant to Paragraph (2) of  
24                   Subsection A, Paragraph (2) of Subsection B or Paragraph (2) of  
25                   Subsection C of Section 66-3-1004 NMSA 1978 to the fund;

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1 C. fees collected pursuant to Subsection F of  
2 Section 66-3-1004 NMSA 1978 to the division, and the money is  
3 appropriated to the division to defray the cost of making and  
4 issuing duplicate registration certificates and nonresident  
5 permits for off-highway motor vehicles;

6 D. of each seventeen dollars (\$17.00) collected  
7 pursuant to Paragraph (3) of Subsection C of Section 66-3-1004  
8 NMSA 1978, five dollars (\$5.00) to the division, and the money  
9 is appropriated to the division to defray the costs of making  
10 and issuing nonresident permits. The remaining twelve dollars  
11 (\$12.00) shall be deposited in the fund;

12 E. fees collected pursuant to Subsection G of  
13 Section 66-3-1004 NMSA 1978 to the tourism department for the  
14 New Mexico clean and beautiful program; and

15 F. notwithstanding the provisions of Subsections A  
16 through E of this section, seven dollars (\$7.00) of each fee  
17 collected by the department of game and fish to the game  
18 protection fund. "

19 Section 5. Section 66-3-1005 NMSA 1978 (being Laws 1978,  
20 Chapter 35, Section 201, as amended) is amended to read:

21 "66-3-1005. EXEMPTIONS.--The provisions of the Off-  
22 Highway Motor Vehicle Act shall not apply to off-highway motor  
23 vehicles that are:

24 A. owned and operated by [~~any~~] an agency or  
25 department of the United States, this state or [~~any~~] a

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1 political subdivision of this state;

2 B. operated exclusively on lands privately held by  
3 the off-highway motor vehicle owner; provided that the  
4 appropriate tax or fee has been paid in lieu of the motor  
5 vehicle registration fees;

6 ~~[C. owned by nonresidents of this state; provided~~  
7 ~~that the use in this state shall be for competition purposes~~  
8 ~~only and shall not exceed fifteen days and provided that the~~  
9 ~~use is not on a rental basis;~~

10 ~~D.] C.~~ brought into this state by manufacturers or  
11 distributors for wholesale purposes and not used for  
12 demonstrations;

13 ~~[E.] D.~~ ~~[which are]~~ in the possession of dealers as  
14 stock-in-trade and not used for demonstration purposes; ~~[or]~~

15 ~~[F.] E.~~ ~~[which are]~~ farm tractors ~~[or]~~, as defined  
16 in Section 66-1-4.6 NMSA 1978, special mobile equipment, as  
17 defined in Section ~~[66-1-4]~~ 66-1-4.16 NMSA 1978, or off-highway  
18 motor vehicles being used for agricultural operations; or

19 F. used exclusively on private closed courses,  
20 whether owned by the rider or another person; provided that, if  
21 applicable, the excise tax and registration fees have been paid  
22 and are current. "

23 Section 6. Section 66-3-1006 NMSA 1978 (being Laws 1978,  
24 Chapter 35, Section 202, as amended) is amended to read:

25 "66-3-1006. GROUNDS FOR REFUSING REGISTRATION OR

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1 CERTIFICATE OF TITLE. -- The division may refuse registration or  
2 issuance of a certificate of title or any transfer of a  
3 registration [~~upon the grounds that~~] certificate if:

4 A. the division has reasonable grounds to believe  
5 that the application contains any false or fraudulent statement  
6 or that the applicant has failed to furnish the required  
7 information or reasonable additional information requested by  
8 the division or that the applicant is not entitled to the  
9 issuance of a certificate of title or registration certificate  
10 of the off-highway motor vehicle under the Motor Vehicle Code  
11 or laws of this state;

12 B. the division has reasonable [~~ground~~] grounds to  
13 believe that the off-highway motor vehicle is [a] stolen or  
14 embezzled [~~vehicle~~] or that the granting of a registration  
15 certificate or the issuance of a certificate of title would  
16 constitute a fraud against the rightful owner or other person  
17 having a valid lien upon the off-highway motor vehicle;

18 C. the division has reasonable grounds to believe  
19 that a nonresident applicant is not entitled to registration  
20 issuance under the laws of the nonresident applicant's state of  
21 residence;

22 [~~C.~~] D. the required [~~fee has~~] fees have not been  
23 paid; or

24 [~~D.~~] E. the motor vehicle excise tax has not been  
25 paid pursuant to Chapter 7, Article 14 NMSA 1978."

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1 Section 7. Section 66-3-1007 NMSA 1978 (being Laws 1978,  
2 Chapter 35, Section 203, as amended) is amended to read:

3 "66-3-1007. [~~EVIDENTIAL~~] EVIDENTIARY VALUE OF CERTIFICATE  
4 OF TITLE. --A certificate of title issued by the division for  
5 [a] an off-highway motor vehicle shall be received [~~in~~  
6 ~~evidence~~] as prima facie evidence of the ownership of the off-  
7 highway motor vehicle named in the certificate and as prima  
8 facie evidence of all liens and encumbrances against the off-  
9 highway motor vehicle appearing on the certificate. "

10 Section 8. Section 66-3-1008 NMSA 1978 (being Laws 1978,  
11 Chapter 35, Section 204, as amended) is amended to read:

12 "66-3-1008. [~~REGISTRATION PLATES~~] VALIDATING STICKERS TO  
13 BE FURNISHED BY DIVISION. --The division, upon registering [a]  
14 an off-highway motor vehicle, shall issue to the owner  
15 [~~registration plates or validation~~] validating stickers as  
16 provided in Section 66-3-14 NMSA 1978. "

17 Section 9. A new section of the Off-Highway Motor Vehicle  
18 Act is enacted to read:

19 "[NEW MATERIAL] OFF-HIGHWAY MOTOR VEHICLE SAFETY TRAINING  
20 ORGANIZATION-- APPROVAL AND CERTIFICATION. --

21 A. An off-highway motor vehicle safety training  
22 organization that offers and conducts an off-highway motor  
23 vehicle safety training course shall be approved and certified  
24 by the board. Applicants for approval and certification shall  
25 submit an application to the board for consideration.

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1                   B. The board may approve and certify an  
2 organization that meets the minimum criteria established by the  
3 board for an off-highway motor vehicle safety training  
4 organization. Each approval and certification shall be renewed  
5 annually. "

6                   Section 10. A new section of the Off-Highway Motor  
7 Vehicle Act is enacted to read:

8                   "[NEW MATERIAL] OFF-HIGHWAY MOTOR VEHICLE SAFETY PERMIT--  
9 REQUIREMENTS--ISSUANCE.--A person under the age of eighteen  
10 shall be required to successfully complete an off-highway motor  
11 vehicle safety training course for which the person shall have  
12 parental permission. The course shall be conducted by an off-  
13 highway motor vehicle safety training organization that is  
14 approved and certified by the board. Upon successful  
15 completion of the course, the person shall receive an off-  
16 highway motor vehicle safety permit issued by the  
17 organization. "

18                   Section 11. A new section of the Off-Highway Motor  
19 Vehicle Act is enacted to read:

20                   "[NEW MATERIAL] OPERATION AND EQUIPMENT--SAFETY  
21 REQUIREMENTS.--

22                   A. A person shall not operate an off-highway motor  
23 vehicle:

24                                 (1) in a careless, reckless or negligent  
25 manner so as to endanger the person or property of another;

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1 (2) while under the influence of intoxicating  
2 liquor or drugs as provided by Section 66-8-102 NMSA 1978;

3 (3) while carrying a passenger, unless the  
4 vehicle is specifically designed by the manufacturer to carry a  
5 passenger;

6 (4) while in pursuit of and with intent to  
7 hunt or take a species of animal or bird protected by law  
8 unless otherwise authorized by the state game commission;

9 (5) in excess of ten miles per hour within two  
10 hundred feet of a business, animal shelter, horseback rider,  
11 bicyclist, pedestrian or occupied dwelling, unless the person  
12 operates the vehicle on a closed course or track;

13 (6) unless in possession of the person's  
14 registration certificate or nonresident permit;

15 (7) unless the vehicle is equipped with a  
16 spark arrester approved by the United States forest service;  
17 provided that a snowmobile is exempt from this provision;

18 (8) when conditions such as darkness limit  
19 visibility to five hundred feet or less, unless the vehicle is  
20 equipped with:

21 (a) one or more headlights of sufficient  
22 candlepower to light objects at a distance of one hundred fifty  
23 feet; and

24 (b) at least one taillight of sufficient  
25 intensity to exhibit a red or amber light at a distance of two

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1 hundred feet under normal atmospheric conditions; or

2 (9) that produces noise that exceeds ninety-  
3 six decibels when measured using test procedures established by  
4 the society of automotive engineers pursuant to standard  
5 J-1287.

6 B. A person under the age of eighteen shall not  
7 operate an off-highway motor vehicle:

8 (1) or ride upon an off-highway motor vehicle  
9 without wearing eye protection and a safety helmet that is  
10 securely fastened in a normal manner as headgear and that meets  
11 the standards established by the board; or

12 (2) without an off-highway motor vehicle  
13 safety permit.

14 C. A person under the age of eighteen but at least  
15 ten years of age shall not operate an off-highway motor vehicle  
16 unless the person is visually supervised at all times by a  
17 parent, legal guardian or a person over the age of eighteen who  
18 has a valid driver's license. This subsection shall not apply  
19 to a person who is at least:

20 (1) thirteen years of age and has a valid  
21 motorcycle license and off-highway motor vehicle safety permit;  
22 or

23 (2) fifteen years of age and has a valid  
24 driver's license and off-highway motor vehicle safety permit.

25 D. A person under the age of ten shall not operate

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1 an off-highway motor vehicle unless:

2 (1) the vehicle is an age-appropriate size-fit  
3 vehicle established by rule of the board; and

4 (2) the person is visually supervised at all  
5 times by a parent, legal guardian or instructor of a safety  
6 training course certified by the board.

7 E. The requirements of Subsections C and D of this  
8 section do not apply to a person who is part of an organized  
9 tour under the guidance or direction of a guide certified by  
10 the board.

11 F. An off-highway motor vehicle may not be sold or  
12 offered for sale if the vehicle produces noise that exceeds  
13 ninety-six decibels when measured using test procedures  
14 established by the society of automotive engineers pursuant to  
15 standard J-1287. "

16 Section 12. A new section of the Off-Highway Motor  
17 Vehicle Act is enacted to read:

18 "[NEW MATERIAL] SAFETY HELMET-- CIVIL LIABILITY. -- Failure  
19 by a passenger or driver under the age of eighteen to use a  
20 safety helmet while on an off-highway motor vehicle shall not  
21 in any instance constitute fault or negligence and shall not  
22 limit or apportion damages. "

23 Section 13. A new section of the Off-Highway Motor  
24 Vehicle Act is enacted to read:

25 "[NEW MATERIAL] REQUIREMENTS OF DEALERS TO DISTRIBUTE

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1 SAFETY INFORMATION. -- A dealer selling off-highway motor  
2 vehicles shall distribute information recommended by the board  
3 to off-highway motor vehicle purchasers on state laws, safety  
4 requirements, training programs, operating characteristics and  
5 potential risk of injury associated with off-highway motor  
6 vehicles. "

7 Section 14. Section 66-3-1011 NMSA 1978 (being Laws 1975,  
8 Chapter 240, Section 11, as amended) is amended to read:

9 "66-3-1011. OPERATION ON STREETS OR HIGHWAYS-- PROHIBITED  
10 AREAS. --

11 A. ~~[No]~~ A person shall not operate an off-highway  
12 motor vehicle on any:

13 (1) limited access highway or freeway at any  
14 time; or

15 (2) any paved street or highway except as  
16 provided in Subsection B of this section.

17 B. Off-highway motor vehicles may cross streets or  
18 highways, except limited access highways or freeways, if the  
19 crossings are made after coming to a complete stop prior to  
20 entering the roadway. ~~[These]~~ Off-highway motor vehicles shall  
21 yield the right of way to oncoming traffic and shall begin a  
22 crossing only when it can be executed safely and then cross in  
23 the most direct manner as close to a perpendicular angle as  
24 possible.

25 C. A person shall not operate an off-highway motor

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1 vehicle on state game commission-owned, -controlled or  
2 -administered land except as specifically allowed pursuant to  
3 Chapter 17, Article 6 NMSA 1978.

4 D. A person shall not operate an off-highway motor  
5 vehicle on land owned, controlled or administered by the state  
6 parks division of the energy, minerals and natural resources  
7 department, pursuant to Chapter 16, Article 2 NMSA 1978."

8 Section 15. Section 66-3-1012 NMSA 1978 (being Laws 1978,  
9 Chapter 35, Section 208, as amended) is amended to read:

10 "66-3-1012. [~~MOVEMENT~~] DRIVING OF OFF-HIGHWAY MOTOR  
11 VEHICLES ADJACENT TO HIGHWAY. --

12 A. Off-highway motor vehicles issued a  
13 [registration plate, pursuant to Subsection C of Section 66-3-  
14 1003 NMSA 1978] validating sticker or nonresident permit may be  
15 [moved, by nonmechanical means only] driven adjacent to a  
16 highway, yielding to all vehicles entering or exiting the  
17 highway, in a manner so as not to interfere with traffic upon  
18 the highway, only for the purpose of gaining access to or  
19 returning from areas designed for the operation of off-highway  
20 motor vehicles by the shortest possible route and when no other  
21 route is available or when the area adjacent to a highway is  
22 being used as a staging area. Such use must occur between the  
23 highway and fencing that separates the highway from private or  
24 public lands.

25 B. When snow conditions permit, an off-highway

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1 motor vehicle may be operated on the right-hand side of a  
2 highway, parallel, but not closer than ten feet, to the inside  
3 of the plow bank. "

4 Section 16. Section 66-3-1013 NMSA 1978 (being Laws 1975,  
5 Chapter 240, Section 13, as amended) is amended to read:

6 "66-3-1013. LIABILITY--LOCAL REGISTRATION PROHIBITED. --

7 A. ~~[No]~~ A landowner shall not be held liable for  
8 damages arising out of off-highway motor vehicle-related  
9 accidents or injuries occurring on ~~[his]~~ the landowner's lands  
10 in which ~~[he]~~ the landowner is not directly involved unless the  
11 entry on the lands is subject to payment of a fee.

12 B. It is unlawful to operate an off-highway motor  
13 vehicle on private lands or roads except with the express  
14 permission of the ~~[owner]~~ landowner or leaseholder of the  
15 lands. "

16 Section 17. Section 66-3-1014 NMSA 1978 (being Laws 1975,  
17 Chapter 240, Section 14, as amended) is amended to read:

18 "66-3-1014. ACCIDENTS AND ACCIDENT REPORTS. -- ~~[Any~~  
19 ~~operator]~~ The driver of an off-highway motor vehicle involved  
20 in an accident resulting in injuries to or the death of ~~[any]~~ a  
21 person or resulting in damage to public or private property to  
22 the extent of ~~[fifty dollars (\$50.00)]~~ five hundred dollars  
23 (\$500) or more shall immediately notify a law enforcement  
24 ~~[officer or a law enforcement]~~ agency of the accident and the  
25 facts relating to the accident. If the driver is under the age

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1 of eighteen, the driver's parent or legal guardian shall  
2 immediately notify a law enforcement agency of the accident and  
3 the facts relating to the accident."

4 Section 18. Section 66-3-1015 NMSA 1978 (being Laws 1978,  
5 Chapter 35, Section 211, as amended) is amended to read:

6 "66-3-1015. ENFORCEMENT. -- ~~[Every]~~ A wildlife conservation  
7 officer, state ~~[policeman]~~ police officer or peace officer of  
8 this state or any of its political subdivisions, upon  
9 displaying ~~[his]~~ the officer's badge of office, has the  
10 authority to enforce the provisions of the Off-Highway Motor  
11 Vehicle Act and may:

12 A. require ~~[the operator of any]~~ an off-highway  
13 motor vehicle operator to produce:

14 (1) the ~~[certificate of]~~ registration  
15 certificate or nonresident permit;

16 (2) proof of successful completion of an off-  
17 highway motor vehicle training course conducted by an off-  
18 highway safety training organization approved and certified by  
19 the board, when required by Section 10 of this 2005 act; and

20 (3) the personal identification of the  
21 operator; and ~~[may]~~

22 B. issue citations for violations of the provisions  
23 of the Off-Highway Motor Vehicle Act. "

24 Section 19. A new section of the Off-Highway Motor  
25 Vehicle Act is enacted to read:

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1           " [NEW MATERIAL] OFF-HIGHWAY MOTOR VEHICLE SAFETY BOARD

2           CREATED- - MEMBERS- - COMPENSATION. - -

3           A.    The "off-highway motor vehicle safety board" is  
4           created.   The board consists of the following nine ex-officio  
5           members or their designees and fifteen appointed members:

6                           (1)   the director of the department of game and  
7           fish;

8                           (2)   the director of the motor vehicle  
9           division;

10                          (3)   the secretary of transportation;

11                          (4)   the secretary of public safety;

12                          (5)   the commissioner of public lands;

13                          (6)   the secretary of energy, minerals and  
14           natural resources;

15                          (7)   the secretary of tourism;

16                          (8)   the secretary of health;

17                          (9)   the director of the state parks division  
18           of the energy, minerals and natural resources department;

19                          (10)   one member of the New Mexico department  
20           of agriculture appointed by the board of regents of New Mexico  
21           state university;

22                          (11)   one representative from each of the  
23           state's six tourism regions with expertise in off-highway motor  
24           vehicle safety or motorized and non-motorized recreation, two  
25           of whom are appointed by the secretary of health, two of whom

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1 are appointed by the secretary of tourism and two of whom are  
2 appointed by the secretary of energy, minerals and natural  
3 resources, to include at least one member of:

4 (a) a recognized off-highway motorcycle  
5 user group;

6 (b) an all-terrain vehicle user group;

7 and

8 (c) a snowmobile user group;

9 (12) three representatives from local law  
10 enforcement agencies appointed by the secretary of public  
11 safety;

12 (13) two representatives from a conservation  
13 or environmental organization appointed by the secretary of  
14 energy, minerals and natural resources;

15 (14) two off-highway motor vehicle dealers  
16 appointed by the secretary of tourism; and

17 (15) one health professional with expertise in  
18 injury prevention or treatment appointed by the secretary of  
19 health.

20 B. The board shall select a chairperson, a vice  
21 chairperson and other officers as it deems necessary.

22 C. The board shall meet at the call of the  
23 chairperson but not less than twice annually. A majority of  
24 members constitutes a quorum for the transaction of business.

25 The affirmative vote of at least a majority of the quorum

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1 present shall be necessary for an action to be taken by the  
2 board.

3 D. Members shall be appointed to staggered terms of  
4 two years each; provided that no more than eight terms expire  
5 in any one year. The ex-officio board members shall select by  
6 lot eight appointed members to serve initial terms of three  
7 years each. A vacancy shall be filled by appointment by the  
8 original appointing authority for the remainder of the  
9 unexpired term.

10 E. Appointed members of the board are entitled to  
11 reimbursement for attending meetings of the board as provided  
12 for nonsalaried officers in the Per Diem and Mileage Act and  
13 shall receive no other compensation, perquisite or allowance."

14 Section 20. A new section of the Off-Highway Motor  
15 Vehicle Act is enacted to read:

16 "[NEW MATERIAL] BOARD-- POWERS AND DUTIES. --

17 A. The board may cooperate with appropriate federal  
18 agencies, public and private organizations and corporations and  
19 local government units to implement the provisions of the Off-  
20 Highway Motor Vehicle Act.

21 B. The board shall:

22 (1) accept and evaluate all applications for  
23 approval and certification of an off-highway motor vehicle  
24 safety training organization and approve and certify those that  
25 meet the minimum criteria;

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1 (2) notify the division of the off-highway  
2 motor vehicle safety training organizations that have received  
3 approval and certification;

4 (3) establish minimum criteria, by January 1,  
5 2007, to approve and certify an off-highway motor vehicle  
6 safety training organization. The criteria shall include  
7 requirements for curriculum and materials for:

8 (a) training instructors to teach off-  
9 highway motor vehicle safety;

10 (b) training the public about off-  
11 highway motor vehicle safety and age-appropriate size-fit use  
12 of off-highway motor vehicles; and

13 (c) teaching responsible use of off-  
14 highway motor vehicles with respect to environmental  
15 considerations, private property restrictions, off-highway  
16 motor vehicle operating laws and prohibitions against operating  
17 off-highway motor vehicles under the influence of alcohol or  
18 drugs;

19 (4) implement, by January 1, 2007, a state  
20 off-highway motor vehicle safety training and certification  
21 program;

22 (5) adopt and promulgate rules regarding the:

23 (a) age-appropriate size-fit use of off-  
24 highway motor vehicles;

25 (b) acceptance or accreditation of

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1 instruction or safety courses provided by other states; and

2 (c) standards covering the  
3 specifications of eye protection and safety helmets;

4 (6) determine, with public participation and  
5 input, off-highway motor vehicle park, facility and trail  
6 locations. The board shall establish criteria to determine  
7 locations that include consideration of off-highway motor  
8 vehicle operating laws and effects on:

9 (a) wildlife and the environment;

10 (b) adjacent state, county, federal,  
11 tribal and private property;

12 (c) other recreational and  
13 nonrecreational uses on the same or adjacent lands; and

14 (d) archaeological, cultural and  
15 historic resources;

16 (7) restore or, if deemed necessary, close  
17 off-highway motor vehicle tracks or trails if they pose  
18 significant or irreversible environmental damage, a danger to  
19 users or a public nuisance as determined by the board. The  
20 board shall consider the construction of alternative tracks or  
21 trails as part of the closure process;

22 (8) accept and evaluate all applications for  
23 grants from the fund and make recommendations to the tourism  
24 department. The board shall establish criteria for grants from  
25 the fund that include consideration of the:

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- 1 (a) applicant's financial and legal  
2 status;
- 3 (b) applicant's management plan,  
4 including specific measures to avoid or minimize environmental  
5 damage to public and private lands and danger to users and  
6 spectators;
- 7 (c) operating budget for the park,  
8 trail, facility or staging area;
- 9 (d) availability of matching funds; and  
10 (e) public participation and input; and  
11 (9) certify tour guides. "

12 Section 21. A new section of the Off-Highway Motor  
13 Vehicle Act is enacted to read:

14 "[NEW MATERIAL] FUND CREATED--DISPOSITION. --

15 A. The "trail safety fund" is created in the state  
16 treasury. The fund is a nonreverting fund, and income from  
17 investment of the fund shall be credited to the fund. The fund  
18 shall be administered by the tourism department, and money in  
19 the fund is appropriated to the tourism department to carry out  
20 the purposes of the Off-Highway Motor Vehicle Act.  
21 Expenditures from the fund shall be by warrant of the secretary  
22 of finance and administration upon vouchers signed by the  
23 secretary of tourism or the secretary's authorized  
24 representative.

25 B. The tourism department, upon recommendation by

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1 the board, shall make distributions from the fund to develop  
2 and maintain trails, build and maintain staging areas, market  
3 safety programs and promote safety for off-highway motor  
4 vehicles. "

5 Section 22. A new section of the Off-Highway Motor  
6 Vehicle Act is enacted to read:

7 "[NEW MATERIAL] PENALTIES. --

8 A. Unless the violation is declared a felony, a  
9 petty misdemeanor or a citation under the Motor Vehicle Code, a  
10 person who violates the provisions of the Off-Highway Motor  
11 Vehicle Act is guilty of a misdemeanor pursuant to Section  
12 66-8-7 NMSA 1978.

13 B. When a person is convicted of a felony or  
14 misdemeanor committed while operating an off-highway motor  
15 vehicle, the court may order the person to complete a board-  
16 certified safety training course. "

17 Section 23. Section 66-4-1 NMSA 1978 (being Laws 1978,  
18 Chapter 35, Section 214, as amended) is amended to read:

19 "66-4-1. DEALERS, WRECKERS, WHOLESALERS AND DISTRIBUTORS  
20 OF VEHICLES AND TITLE SERVICE COMPANIES MUST BE LICENSED--  
21 PRESUMPTION OF CONDUCTING BUSINESS. --

22 A. A person, unless licensed to do so by the  
23 department, shall not carry on or conduct the active trade or  
24 business of:

25 (1) a dealer in motor vehicles of a type

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1 subject to registration pursuant to the Motor Vehicle Code,  
2 including:

3 (a) trailers, but not trailers sold as  
4 kits;

5 (b) recreational vehicles designed to be  
6 towed; [~~and~~]

7 (c) motorcycles over fifty-five cubic  
8 centimeters; and

9 (d) off-highway motor vehicles pursuant  
10 to the Off-Highway Motor Vehicle Act;

11 (2) dismantling any vehicle for the resale of  
12 the parts. Any person possessing three or more wrecked,  
13 dismantled or partially wrecked or dismantled vehicles and  
14 selling or offering for sale a used vehicle part and who  
15 regularly sells or offers for sale used vehicles or used  
16 vehicle parts shall be presumed to be conducting the business  
17 of wrecking or dismantling a vehicle for the resale of the  
18 parts;

19 (3) wholesaling of vehicles. Any person who  
20 sells or offers for sale vehicles of a type subject to  
21 registration in this state, to a vehicle dealer licensed  
22 pursuant to the Motor Vehicle Code or who is franchised by  
23 a manufacturer, distributor or vehicle dealer to sell or  
24 promote the sale of vehicles dealt in by such manufacturer,  
25 distributor or vehicle dealer shall be presumed to be

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1 conducting the business of wholesaling;

2 (4) distributing of vehicles. Any person who  
3 distributes or sells new or used motor vehicles to dealers and  
4 who is not a manufacturer shall be presumed to be conducting  
5 the business of distributing vehicles; or

6 (5) a title service company. Any person who  
7 for consideration prepares or submits applications for the  
8 registration of or title to vehicles shall be presumed to be  
9 engaging in the business of a title service company.

10 B. Application for a dealer, wholesaler,  
11 distributor or wrecker of vehicles license or a title service  
12 company license shall be made upon the form prescribed by the  
13 department and shall contain the name and address of the  
14 applicant and, when the applicant is a partnership, the name  
15 and address of each partner or, when the applicant is a  
16 corporation, the names of the principal officers of the  
17 corporation and the state in which incorporated and the place  
18 where the business is to be conducted and the nature of the  
19 business and such other information as may be required by the  
20 department. Every application shall be verified by the oath or  
21 affirmation of the applicant, if an individual, or, in the  
22 event an applicant is a partnership or corporation, by a  
23 partner or officer of the partnership or corporation. Every  
24 application shall be accompanied by the fee required by law.

25 C. A metal processor or dealer in scrap who

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1 dismantles, processes for scrap, shreds, compacts, crushes or  
2 otherwise destroys more than three vehicles within a period of  
3 one year shall be licensed pursuant to the provisions of  
4 Sections 66-4-1 through 66-4-9 NMSA 1978.

5 D. To ensure that a dealer, wholesaler,  
6 distributor, wrecker of vehicles or title service company  
7 complies with this section, the secretary may apply to a  
8 district court of this state to have a person operating without  
9 a license as required by this section or operating without the  
10 bond required by Section 66-4-7 NMSA 1978 enjoined from  
11 engaging in business until that person complies with the  
12 requirements of licensing as provided by this section and the  
13 bonding requirements of Section 66-4-7 NMSA 1978.

14 E. Upon application to a court for the issuance of  
15 an injunction against an unlicensed person, the court may issue  
16 an order temporarily restraining that person from doing  
17 business. The court shall hear the matter within three days  
18 and, upon a showing by the preponderance of the evidence that  
19 the person is operating without a license and that the person  
20 has been given notice of the hearing as required by law, the  
21 court may enjoin the person from engaging in business in New  
22 Mexico until the person ceases to be unlicensed. Upon issuing  
23 an injunction, the court may also order the business premises  
24 of the person to be sealed by the sheriff and may allow the  
25 person access thereto only upon approval of the court.

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1 F. A temporary restraining order shall not be  
2 issued against a person who has complied with the provisions of  
3 this section. Upon a showing to the court by a person against  
4 whom a temporary restraining order has been issued that ~~he~~  
5 the person has a license in accordance with the provisions of  
6 this section, the court shall dissolve or set aside the  
7 temporary restraining order. "

8 Section 24. Section 66-6-22.1 NMSA 1978 (being Laws 1990,  
9 Chapter 120, Section 34, as amended) is amended to read:

10 "66-6-22.1. MOTOR VEHICLE SUSPENSE FUND CREATED--  
11 RECEIPTS--DISBURSEMENTS. --

12 A. There is created in the state treasury a fund to  
13 be known as the "motor vehicle suspense fund".

14 B. The fees collected under the provisions of  
15 Sections 66-1-1 through 66-6-19 NMSA 1978 shall be paid to the  
16 state treasurer for the credit of the motor vehicle suspense  
17 fund not later than the close of the second business day after  
18 their receipt, except as otherwise provided by the Off-Highway  
19 Motor Vehicle Act.

20 C. Money deposited to the credit of or disbursed  
21 from the motor vehicle suspense fund shall be accounted for as  
22 provided by law or rule of the secretary of finance and  
23 administration. Disbursements from the motor vehicle suspense  
24 fund shall be made by the department of finance and  
25 administration upon request and certification of their

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